IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 420 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AJAYBHAI THAKORBHAI KACHWALA (AHIR)

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 420 of 2001

MS SUBHADRABEN PATEL FOR MR UTPAL M PANCHAL for Petitioner

MR KT DAVE APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 24/08/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, a prayer is made for quashing and setting aside the externment order dated Nil of March 2001, Annexure C to the petition passed against the petitioner under section 56 of the Bombay Police Act ('the Act' for

short) externing him for a period of two years from the Districts of Surat City and Surat Rural, Navsari, Bharuch and Valsad and the order of the appellate authority dated April 30, 2001, Annexure D to the petition.

2. The petitioner was served with a show cause notice under Section 59 of the Act which inter alia states that the petitioner is involved in the offence registered with Chok Bazar Police Station vide CR No. 29 of 2000 for the commission of the offences under sections 435, 323 and 114 of the Indian Penal Code and on the basis of the statements of three witnesses it was divulged that the petitioner is a strong headed person involved in criminal activities giving threat to persons residing in that locality and started the nefarious activities since February 2000 and in the said activities he used weapons like knife, hockey, etc., and, therefore, it was stated in the said notice as to why the petitioner should not be externed for a period of two years from the aforesaid districts.

3. The petitioner replied to the said show cause notice. The externing authority after considering the material on record passed the impugned order externing him for a period of two years from the aforementioned districts.

4. The petitioner has taken the matter before the appellate authority. After hearing the petitioner, the appellate authority dismissed the appeal which has given rise to the present petition.

5. Ms. Subhadraben Patel, learned advocate for Mr. U.M. Panchal for the petitioner has raised several contentions including that the impugned order of externment is suffering from various vices like non-application of mind, delay in passing the order from the date of issuance of show cause notice and the petitioner is involved in an isolated offence and, therefore, he cannot be said to be a strong headed person. On the aforesaid premises she urged for quashing and setting aside the order of externment passed against the petitioner and the order passed by the appellate authority by which it confirmed the order of externment.

6. Mr. K.T. Dave, learned APP opposed the petition by raising several contentions. According to him, the externing authority has taken into consideration all the aspects of the matter and also considered the statements of the witnesses and then came to the conclusion that the petitioner is a strong headed person and if he is allowed

to remain in the same district he will continue to carry out the activity with more force. Therefore the said order of externment which is confirmed in appeal does not require any interference at the hands of this Court in exercise of the powers under Article 226 of the Constitution.

7. I have heard Ms. Subhadraben Patel, learned advocate for the petitioner and Mr. K.T. Dave, learned APP for the respondents. I have considered the submissions advanced by them. I have also perused the averments made in the petition so also the show cause notice, reply thereto, impugned order passed by the externing authority and the order passed by the appellate authority confirming the order of externment.

8. So far as the factual aspects of the matter are concerned, there is no controversy. Against the petitioner one offence is registered with Chok Bazar Police Station and on the basis of the statements of the witnesses the externing authority came to the conclusion that the petitioner is a strong headed person. The only point which is required to be considered is that the delay in recording the order of externment after the date of issuance of the show cause notice. The show cause notice was issued on June 8, 2000 calling upon the petitioner to show cause as to why he should not be externed and pursuant to it the petitioner gave reply. The externment order came to be passed on March ...., 2001 externing the petitioner for a period of two years. Therefore, it can be said that the said order was passed after lapse of nine months from the date of issuance of show cause notice. Therefore, it can be said that the externment order has been passed without considering the necessity to extern the petitioner after lapse of such a long time and, therefore, it is without application of mind and suffers from the vice of non-application of mind.

9. It is settled proposition of law that under Section 59 of the Act action should be followed as expeditiously as possible and only a short notice must be given and immediately thereafter the witnesses are to be examined and if there is a long delay in passing the order of externment after issuance of show cause notice, the externment authority cannot reasonably come to the conclusion that the moment the externment order is passed the externee is causing or likely to cause or involve in such activities and, therefore, on this sole ground the order of externment suffers from the vice of non-application of mind and requires to be quashed and

set aside by allowing the petition.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned orders at Annexures C and D are quashed and set aside. Rule is made absolute. Direct service is permitted.

24.8.2001. (A.M. Kapadia, J.)

(karan)